



Sen. Daniel Biss

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LRB099 19829 EFG 49179 a

1 AMENDMENT TO HOUSE BILL 6292

2 AMENDMENT NO. _____. Amend House Bill 6292, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Illinois Pension Code is amended by adding
6 Sections 1-113.17, 1-113.17a, 1-113.17b, and 1-113.17c as
7 follows:

8 (40 ILCS 5/1-113.17 new)

9 Sec. 1-113.17. Investment transparency; definitions. As
10 used in this Section and Sections 1-113.17a, 1-113.17b, and
11 1-113.17c:

12 (a) "Affiliate" means any person directly or indirectly
13 controlling or controlled by, or under direct or indirect
14 common control with, another person.

15 (a-5) "Alternative investment fund" means a private equity
16 fund, hedge fund, absolute return fund, or total return fund.

1 (b) "Board" or "public retirement system board" means the
2 board of trustees of a public retirement system and includes
3 the Illinois State Board of Investment established under
4 Article 22A of this Code.

5 (c) "External manager" means either of the following:

6 (1) A person who manages an alternative investment fund
7 and who offers or sells, or has offered or sold, an
8 ownership interest in the alternative investment fund to a
9 board.

10 (2) A general partner, managing member entity, fund
11 manager, fund adviser, or other similar person or entity
12 with decision-making authority over an alternative
13 investment fund.

14 (d) "External manager group" means (1) the external
15 manager, (2) its affiliates, (3) any other parties described in
16 the external manager's marketing materials for the relevant
17 alternative investment fund as providing services to or on
18 behalf of portfolio holdings, and (4) any other parties
19 described in the external manager's affiliated adviser's SEC
20 Form ADV filing as receiving portfolio holding fees or
21 portfolio holding other compensation. "External manager group"
22 does not include the affiliated alternative investment fund in
23 which the public retirement system is an investor, nor does it
24 include an alternative investment fund used to effectuate
25 investments of the affiliated fund in which the public
26 retirement system is an investor.

1 (e) "Marketing materials" means (1) a prospectus, (2) a
2 private placement memorandum, (3) a prospective investor
3 presentation, (4) a due diligence questionnaire, but only if
4 the questions are authored by an external manager, or (5) any
5 other written material provided by an external manager for the
6 purpose of soliciting a commitment to an alternative investment
7 fund.

8 (f) "New agreement" means an agreement that is proposed or
9 executed after February 1, 2019, and includes any modification
10 to or amendment of such an agreement that modifies or alters
11 any of the provisions required to be disclosed under Section
12 1-113.17a or 1-113.17b. "New agreement" also means any
13 subsequent agreement that implements, memorializes, or
14 provides detail about such an agreement.

15 (g) "Person" means an individual, corporation,
16 partnership, limited partnership, limited liability company,
17 or association, either domestic or foreign.

18 (h) "Portfolio holding" means any business, partnership,
19 real property, or other business entity or asset in which an
20 alternative investment fund has, at any time, held either an
21 interest in the securities thereof or a real property interest
22 in, or has acted as a lender to, the entity or asset.

23 (i) "Portfolio holding fee" means the total payment
24 obligation of a portfolio holding, regardless of whether it is
25 actually paid or accrued, and regardless of whether the payment
26 obligation is satisfied in cash, securities, or other

1 consideration, and regardless of whether it is incurred as
2 compensation for services provided or as reimbursement for
3 expenses incurred.

4 (j) "Private equity fund" means a pooled investment entity
5 that is, or holds itself out as being, engaged primarily, or
6 proposes to engage primarily, in investment strategies
7 involving equity or debt financings that are provided for
8 purchasing or expanding private or public companies, or for
9 related purposes such as financing for capital, research and
10 development, introduction of a product or process into the
11 marketplace, or similar needs requiring risk capital. This
12 includes, but is not limited to, financing classified as
13 venture capital, mezzanine, buyout, or growth funds.

14 (k) "Public retirement system" means a pension fund or
15 retirement system subject to Article 5, 6, 7, 8, 9, 11, 12, 13,
16 15, 16, or 17 of this Code, and includes the Illinois State
17 Board of Investment established under Article 22A of this Code.

18 (l) "Task Force" means the Investment Transparency Task
19 Force created under Section 1-113.17c of this Code.

20 (40 ILCS 5/1-113.17a new)

21 Sec. 1-113.17a. Investment transparency; disclosure of
22 alternative investment fund agreements.

23 (a) The definitions in Section 1-113.17 of this Code apply
24 to this Section.

25 (b) Within 90 days after entering into a new agreement to

1 invest in an alternative investment fund, a public retirement
2 system must disclose, in the manner provided under this
3 Section, the existence of the agreement and all of the
4 following parts and provisions of the agreement:

5 (1) All management fee waiver provisions, including,
6 but not limited to, provisions that permit the external
7 manager or general partner to waive fees, or that specify
8 the mechanics of the fee waiver or its repayment, or that
9 specify the magnitude of the fee waiver, or that are
10 necessary to understand how the fee waiver works, and all
11 defined terms related to or affecting the fee waiver.

12 (2) All indemnification provisions, including, but not
13 limited to, provisions that require the alternative
14 investment fund or its investors to indemnify the external
15 manager or general partner, or any of its affiliates, for
16 settlements or judgments paid, and including all
17 provisions necessary to understand how the indemnification
18 works and all defined terms related to or affecting
19 indemnification.

20 (3) All clawback provisions, including, but not
21 limited to, provisions that allow the external manager or
22 general partner to pay back an amount less than the full
23 cost of the overpayment received by the manager, and
24 including all provisions necessary to understand how the
25 clawback works and all defined terms related to or
26 affecting clawbacks.

1 (4) The cover page and signature block of the
2 agreement.

3 However, in the case of a new agreement that consists of a
4 modification of or amendment to a previous new agreement for
5 which the disclosures required under this subsection have
6 already been made, it is sufficient for the public retirement
7 system (i) to identify the previous disclosures and disclose
8 only the parts and provisions of the modification of or
9 amendment to the agreement that modify, alter, or affect any of
10 the provisions previously disclosed under this subsection or
11 (ii) to make and disclose a finding that the modification or
12 amendment does not modify, alter, or affect any of the
13 provisions previously disclosed under this subsection,
14 whichever is applicable.

15 (c) The public retirement system shall make the disclosures
16 required under subsection (b) by doing all of the following:

17 (1) filing a copy of the required material with the
18 Public Pension Division of the Illinois Department of
19 Insurance;

20 (2) filing a copy of the required material with the
21 Illinois Secretary of State; and

22 (3) posting and maintaining the required material on
23 the public retirement system's website.

24 (d) A new agreement shall not be deemed to be violated or
25 made invalid by the public retirement system's good faith
26 effort to make the disclosures required under subsection (b) of

1 this Section, nor due to harmless or inadvertent failure by the
2 public retirement system to correctly include or identify a
3 component of a required disclosure.

4 (e) The following are public records and are subject to
5 disclosure under the Freedom of Information Act:

6 (1) All of the material required to be disclosed under
7 subsection (b) of this Section.

8 (2) Any amounts paid in indemnification and any amounts
9 deducted from payments owed by the general partner or
10 external manager under an agreement establishing or
11 providing for participation in an alternative investment
12 fund by a public retirement system, and any documents
13 submitted to a public retirement system justifying the
14 demand for payment relating to the indemnification.

15 (3) The cover page and a legible copy of the executed
16 signature block of any new agreement to establish or
17 participate in an alternative investment fund by a public
18 retirement system.

19 (f) If a public retirement system adopts and implements the
20 recommendations of the Task Force that apply to this Section,
21 and those recommendations are not rejected by the General
22 Assembly under subsection (f) of Section 1-113.17c, then
23 disclosures made in conformance with those recommendations
24 shall constitute compliance with the disclosure requirements
25 of this Section.

1 (40 ILCS 5/1-113.17b new)

2 Sec. 1-113.17b. Investment transparency; disclosure of
3 certain investment fees.

4 (a) The definitions in Section 1-113.17 of this Code apply
5 to this Section. For the purposes of this Section, "carried
6 interest" means a share of the profits of an alternative
7 investment fund that is paid, accrued, or due to the general
8 partner or the external manager or their affiliates.

9 (b) This Section applies to any new agreement that a public
10 retirement system enters into in order to establish or
11 participate in an alternative investment fund. A public
12 retirement system shall not enter into such new agreement
13 without a written undertaking by the alternative investment
14 fund external managers and general partners that they will
15 comply with this Section and the requirements of the public
16 retirement system pursuant to subsection (c), except as
17 provided in subsection (e).

18 (c) Every public retirement system shall require its
19 alternative investment fund external managers and general
20 partners to make the following disclosures annually, in a
21 manner and form prescribed by the system, in regard to each
22 alternative investment fund:

23 (1) The fees and expenses that the public retirement
24 system pays directly to the alternative investment fund, or
25 to the alternative investment fund external manager or
26 general partner.

1 (2) The public retirement system's share of all fees
2 and expenses not included in paragraph (1), including
3 carried interest, that are paid or allocated from the
4 alternative investment fund to the external manager or
5 general partners, or that are deducted from payments owed
6 from the external manager or general partners to the
7 alternative investment fund.

8 (3) The amount of all management fee waivers made by
9 the alternative investment fund external managers or
10 general partners.

11 (4) The total amount of portfolio holding fees incurred
12 by each portfolio holding of the alternative investment
13 fund as payment to any person who is a member of the
14 external manager group.

15 An alternative investment fund external manager or general
16 partner may provide a public retirement system with a completed
17 reporting template developed by the Institutional Limited
18 Partners Association, and such provision shall constitute
19 compliance with the reporting requirements of this subsection.

20 (d) A public retirement system shall make the information
21 received under subsection (c) available by:

22 (1) filing a copy of the received material with the
23 Public Pension Division of the Illinois Department of
24 Insurance; and

25 (2) posting and maintaining the received information
26 on the public retirement system's website, together with

1 sufficient identifying and explanatory material to
2 facilitate access and understanding by the public.

3 (e) If a public retirement system adopts and implements the
4 recommendations of the Task Force that apply to this Section,
5 and those recommendations are not rejected by the General
6 Assembly under subsection (f) of Section 1-113.17c, then
7 disclosures made in conformance with those recommendations
8 shall constitute compliance with the disclosure requirements
9 of this Section.

10 (40 ILCS 5/1-113.17c new)

11 Sec. 1-113.17c. Investment Transparency Task Force.

12 (a) The definitions in Section 1-113.17 of this Code apply
13 to this Section.

14 (b) There is created the Investment Transparency Task
15 Force. It is the purpose of the Task Force to study, identify
16 best available practices, and make recommendations relating
17 to: (1) disclosure of, and best practices related to, the
18 portions of limited partnership agreements addressing
19 indemnification provisions, clawback provisions, and
20 management fee waivers, which are the subject of Section
21 1-113.17a; and (2) disclosure of fees and expenses incurred,
22 including related fee waivers and portfolio holding fees, which
23 are the subject of Section 1-113.17b.

24 (c) The Task Force shall consist of the following persons:

25 (1) The executive director (or his or her designee) of

1 each public retirement system subject to Article 5, 6, 7,
2 8, 9, 11, 12, 13, 15, 16, or 17 of this Code, and the
3 director of the Illinois State Board of Investment
4 established under Article 22A of this Code (or the
5 director's designee).

6 (2) One person appointed by each of the 4 Legislative
7 Leaders.

8 (3) The State Treasurer, or his or her designee.

9 (4) One person representing the interests of external
10 managers, appointed by the State Treasurer.

11 (5) One person representing the interests of the
12 beneficiaries of public retirement systems, appointed by
13 the State Treasurer.

14 (6) One person representing the interests of Illinois
15 taxpayers, appointed by the State Treasurer.

16 All members shall be appointed for the life of the Task
17 Force. In the case of a resignation or other vacancy occurring
18 among persons appointed under item (2), (3), (4), (5), or (6),
19 a replacement member may be appointed by the applicable
20 appointing authority.

21 (d) Members of the Task Force shall serve without
22 compensation, but may be reimbursed for their necessary
23 expenses from funds lawfully available for that purpose.

24 (e) No later than January 15, 2018, the Task Force shall
25 report to the General Assembly and the public retirement
26 systems its findings and recommendations, which must be adopted

1 by a majority of the members appointed. The report of the Task
2 Force shall separate and clearly designate the portions of its
3 findings and recommendations that relate (i) to Section
4 1-113.17a and (ii) to Section 1-113.17b. In each portion, the
5 findings and recommendations shall be prepared and presented in
6 a form that can be readily identified, adopted, and implemented
7 by any public retirement system wishing to do so. Copies of the
8 report shall be made available to the public as provided by
9 law.

10 (f) The 100th General Assembly may, by joint resolution,
11 reject the portion of the report relating to Section 1-113.17a,
12 the portion of the report relating to Section 1-113.17b, or
13 both. Any part of the report that is not so rejected shall be
14 deemed to have been accepted by the General Assembly as
15 consistent with the public policy of the State.

16 (g) A public retirement system may adopt and implement any
17 of the recommendations of the Task Force at any time. However,
18 if one or both portions of the report are rejected by the
19 General Assembly under subsection (f), the public retirement
20 system shall adjust its implementation of the rejected
21 provision as necessary to comply with the requirements of
22 Section 1-113.17a or 1-113.17b or both, as applicable.

23 Section 99. Effective date. This Act takes effect upon
24 becoming law."